1988

City of Salt Lake v. Artis Brent Bulla : Reply Brief

Utah Supreme Court

Roger F. Cutler; Salt Lake City Attorney; Donald L. George; Assistant City Prosecutor.
Artis B. Bulla; Pro Se.

IN THE UTAH COURT OF APPEALS

City of Salt Lake Plaintiff/Respondent	)	
vs.	)	Case No. 880075-CA
Artis Brent Bulla Defendant/Appellant	)	

APPELLANT REPLY TO BRIEF OF THE RESPONDENT

Appeal from an order of the
Salt Lake County Fifth Circuit Court
Michael Hutchings, Presiding

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In Person

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CASES CITED

IN THE UTAH COURT OF APPEALS

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ISSUES PRESENTED

I: Whether defendant's fifth amendment right was violated in an investigation of Salt Lake City Police Officers subsequent to a traffic violation.

II. Whether there were any proceedural errors requiring reversal.I

GOVERNING LAW

United States Constitution; Article V.

> ...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law...

Hopt vs. Utah, 110 U.S. 574 at 585 (1884)

> Coerced confession is one which "appears to have been made, either in consequence of inducements of a temporal nature...or because of a threat or promise...which, operating upon the fears or hopes of the accused...deprive him of that freedom of will or self-control essential to

make his confession voluntary within the meaning of the law."

Wilson vs. United States, 162 U.S. 613 at 623 (1896)

In short, the true test of admissibility is that the confession is made freely, voluntarily, and without compulsion or inducement of any sort."

Miranda vs. Arizona, 384 U.S. 436 at 444-445 (1966)

"...if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him."

Utah Code of Criminal Proceedure

77-35-19. Rule 19 — Instructions.

(c)...Notwithstanding a party's failure to object, error may be assigned to instructions in order to avoid a manifest injustice.

STATEMENT OF THE CASE

The facts are as follows:

1. Defendant invoked Fifth amendment at the beginning of the custodial interrogation as can be found in defendant's testimony. (T.)

2. As pointed out in 7. of pg. 5, Respondent's brief, a pat-down search was made while I was hand-cuffed, long after I had invoked the fifth at the beginning which still was totally ignored by the officer. So this also was done over

my protest. Defendant asks, how was the Officer's protection insured by going through my wallet over my protest as stated by Mr. George in 7? So as per the statement in 7. this was compulsory testimony against myself, on the part of Officer Guest. His sole purpose for the search was to obtain information which I had refused to give him in the beginning, invoking my fifth-amendment right.

3. The two warrants which Mr. George in 8., p. 5 in his brief referred to was eighteen dollars which I had remaining on a thirty dollar fine, and the other was subsequently found by Justice Phyllis Scott to be of no merit and dismissed by her. So I am not the dangerous liar and felon that I am colored to be by the proceeding of the lower court and the so-called authorities. Also defendant denies making any statement in 8.

4. The crucial "facts" (when I invoked the fifth, and John Paul Jones, vs. Paul Arthur Jones) established by the prosecution was on the basis of one witness only, and since his job depends on his adherance to proper police proceedure, his motive for not telling the truth in contradicting my testimony concerning the false information charge is manifest. Being extremely arrogant in his conduct, he plainly was punishing me for invoking my right, also. The jury, being over-awed by the manipulative power of the State,

intimidated by this power, was therefor not impartial in this deciding even matters of fact, because it requires two witnesses to establish every word, not one. Therefor this subtle manipulation deprives me of my right to an impartial jury. Because an impartial jury would have immediately determined that fact cannot be established on the testimony of one witness only, it requiring two. No jury instruction was made by the referee, or judge, in this matter. Therefor I can only conclude that the whole proceeding is geared to and in favor of the prosecution, because the sufficiency of witnesses--given the motive of the prosecution: the law-enforcement growth industry--was over-looked by the presiding judge. The cash register must keep ringing.

5. Fact was established by the prosecution on the testimony of one witness, only, which was directly contradicted by defendant's testimony. Jury instructions on this failure of the prosecution to adequately establish fact was conspicously misssing, instead only stock instructions were used, which were not tailored to defendant's trial situation. Thus defendant was deprived of a fully informed and impartial jury by this failure. The jury merely became a lever to be manipulated by the prosecution, in collusion with the presiding authority, to obtain the desired result.

6. Jury was dismissed whenever points of law were argued

before the court, thus effectively further hampering and restricting the jury in their capacity to judge both law and facts. Notwithstanding defendant did not object, error was made, limiting the power of the jury, and thus depriving me of my right to an **impartial** jury trial as provided by the law of the land, which is the Bill of Rights of the Constitution of the United States, Article VI. No rule-making, legislation, or fettered and manipulated "jury" (which has become a rubber-stamp for the assertions of the prosecution), may deprive me of this right. Therefor a manifest injustice was perpetrated, and though defendant may have failed to object, error was made which perpetrated this injustice.

7. Where rights are concerned argumenst being tautological, citing to the record is not always necessary, in making legal arguments.

REBUTTAL TO RESPONDENT SUMMARY OF ARGUMENT

(1) As Respondent states in his brief: "The Fifth Amendment "Miranda" rights against self-incrimination which defendant relies on are inapposite (irrelevant) given the facts of this case. Miranda dealt with a post-arrest, station house interrogation over a substantial period of time." This is a very clever obfuscation of the fact that defendant did not rely on Miranda war-

nings not being given, to prove that defendant was denied due-process, but that a more basic law than Miranda was violated, the fifth amendment to the United States Constitution, which was ignored by the policeman. The indicia of custody were present: handcuffs and police lights.

(2) There was error committed by the court concerning sufficiency of witnesses and jury instruction which rendered the jury ineffective and rendering an impartial verdict through manipulation which abrogated jury nullification power.

REBUTTAL TO ARGUMENT

POINT I

MIRANDA WARNING IS NOT IN QUESTION, BECAUSE DEFENDANT ASSERTED HIS FIFTH AMMENDMENT RIGHT AT THE BEGINNING AND KNEW HIS RIGHT, INDEPENDANT OF WARNINGS DESCRIBED IN MIRANDA

(1) Respondent's argument is specious from the outset, because the governing law in this case is not Miranda, but Article V, Bill of Rights, United States Constitution as amplified and commented on in Hopt vs. Utah, 110 U.S. 574 at 585 (1884) and Wilson vs. United States, 162 U.S. 613 at 623 (1896) in which it is stat that coerced confession is one which "appears to have been made, either in consequence of inducements of a temporal na-

ture...or because of a threat or promise...which, operating upon the fears or hopes of the accused...deprive him of that freedom of will or self-control essential to make his confession voluntary within the meaning of the law." Wilson vs. United States, 162 U.S. 613 at 623 (1896): "In short, the true test of admissibility is that the confession is made freely, voluntarily, and without compulsion or inducement of any sort. "Miranda, as well, as cited in defendant's brief covers the whole ground, not just station-house interrogation, which respondent fails to address: "Likewise, if the individual is **alone** and indicates in any manner that he does not wish to be interrogated, the police may not question him." Miranda vs. Arizona, 384 U.S. 534 at 540-541. Lack of Miranda warnings is incidental because the Fifth Amendment was abrogated by the Officer in his subsequent questioning and badgering, not Miranda. Miranda warnings are not in question here, because defendant asserted his rights independant of promptings required by Miranda. It is Hopt vs. Utah, not Miranda, and Article V that was violated by the officer, and the Supreme Court rules in this matter. Miranda is not even in question, because defendant had already asserted his right independant of being warned as required by Miranda, which assertion was flagrantly ignored by the officer.

A. NO ONE QUESTIONED AT ANY TIME IN THE PROCEEDING THE RIGHT OF THE OFFICER TO QUESTION DEFENDANT. THEREFOR THIS ARGUMENT IS ALSO POINTLESS AND AN OBVIOUS OBFUSCASTION OF

THE FACTS.

No one questions the authority of the officer to question defendant as cited in 77-7-15. What seems to be in question by the prosecution, is my right not to be compelled by coercion to testify against myself, which mere nobless oblige, not just compulsion, requires the great fiefdom of the City of Salt Lake to adhere to, the Fifth Amendment to the Constitution, not to mention Hopt vs. Utah and Wilson vs. United States. Either society abides by the law of the land or it does not. If so-called authorities are free to break the law, and thereby become a uniformed mob to commit robbery under the mere color of law then we descend into right by mob, not right by law. I regard this law-enforcement growth industry to be a serious imposition on the unalienable rights of an hitherto innocent public, which makes the impositions of a King George pale in comparison. If the fifth amendment is so easily done away, then we may as well suspend the writ of habeus corpus, and every other right we have. Miranda says: "...if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." Miranda vs. Arizona, 384 U.S. 436 at 444-445. Officer Guest in his zeal to assert his authority under 77-7-15 ignored and trampeled upon and abrogated this most fundamental right guaranteed in the Constitution. Miranda warnings are not at issue, but the invocation of the fifth amendment as cited

in defendant's brief.

B. DEFENDANT DOES NOT BASE HIS ARGUMENT ON MIRANDA RIGHTS NOT BEING READ, BUT ON FIFTH AMENDMENT NOT BEING ADHERED TO BY POLICE OFFICER WHEN INVOKED, INDEPENDANT OF MIRANDA WARNINGS, WHICH WAS AT THE BEGINNING OF THE INTERROGATION. INDICIA OF ARREST WERE, ON THE CONTRARY, PRESENT.

According to defendant testimony (T) fifth amendment was invoked at once, and then inquistorial and proceedural abuses were then entered into by the police officer for the space of half and hour. One can easily see when oneself is in that situation, that inquisitorial abuses were then directed against defendant, which are unconstitutional independant of Miranda, and it is not Miranda that was violated by the Officer, but the Constitution of the United States. In Hopt vs. Utah, 110 U.S. 574 at 585 (1884)

Coerced confession is defined as one which "appears to have been made, either in consequence of inducements of a temporal nature...or because of a threat or promise...which, operating upon the fears or hopes of the accused...deprive him of that freedom of will or self-control essential to make his confession voluntary within the meaning of the law."

Also, When the lights are flashing on a police vehicle, this is detention, no matter how brief. The defendant was therefor most definitely detained against his will. This custody was cemented when the handcuffs were produced before the pat down

search, and after the right against self-incrimination was invoked. The cit quoted from Miranda does not just deal with "reading of rights". This is not the issue. Reading of my rights was not necessary. Defendant knew his rights and asserted them at the beginning. Miranda covers the whole ground, not just "station-house" questioning. The cit I quoted deals with inquisition after fifth amendment is invoked, not reading of rights! Justice Warren said the fifth amendment protected an individual before interrogation as well as during station- house interrogation. He said, "At this point he has shown that he intends to exercise his fifth amendment privilege." Therefore "any statement taken after the person invokes his privilege (not after he is in the station-house!) cannot be other than the product of compulsion, subtle or otherwise." Likewise, if the individual is alone (not in a station house only) and indicates in any manner that he does not wish to be interrogated, the police may not question him." **Miranda vs. Arizona, 384 U.S. 534 at 474.** No one questions the right of the police officer to question a suspect, but the right to swing a fist ends where my nose begins. The right of the policeman to question stops where fifth amendment (not Miranda) begins, else we have an inquistion with its train of abuses no matter where the site of this inquisition. Is a murder no longer a murder because of the site at which the murder occurs? The right against self incrimination applys, not

just in a station-house, but on a sidewalk as well.

Respondent on p. 11 of his brief also says: "It was not coercion by the officers..." Defendant asks, what was it then that pryed open my lips, if not coercion, "subtle or otherwise"? Instead of choosing to remain silent, defendant chose ironical statement instead, which the officer then twisted to manufacture the false information charge. (T).

REBUTTAL TO POINT II

THERE WAS ERROR COMMITTED BY THE COURT CONCERNING SUFFICIENCY OF WITNESSES AND JURY INSTRUCTION WHICH RENDERED THE JURY INEFFECTIVE TO DELIVER AN IMPARTIAL VERDIOCT THROUGH MANIPULATION WHICH ABROGATED JURY NULLIFICATION POWER.

Jury nullification or "Jury lawlessness is the greatest corrective of law in its actual administration. The will of the state at large imposed on a reluctant community, the will of a majority imposed on a vigorous and determined minority, find the same obstacle in the **local jury** that formerly confronted kings and minsters." U.S. vs. Dougherty, 473 F 2d at 1130. The jury must be informed of this nullification power by the judge and not limited in its scope, because of the informal cultural sources which they must instintively draw upon to render justice. It is justice the court should be after, not a text-book, dictionary definition defined by the judge or prosecution. Therefore the jury instruction: "...it is your duty as jurors to follow the law as the court states it to you, regardless of what you

personally believe the law is or ought to be." **R. 18-32, Instruction #2** as stated in the Respondent's brief abrogates defendant's right to an impartial jury, and a trial by a jury of defendant's (not prosecution's) peers. The weight of case law supports this jury "lawlessness":

> The jury has the right to determine the law as well as facts. **Georgia vs. Brailsford, 3 Dallas 1, 1794.**
>
> The jury has the power to bring in a verdict in the teeth of both law and facts. **Horning vs. D.C. 254 U.S. at 135, 138 (1920); Oliver Wendell Holmes.**
>
> ...or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to aquit, and the courts must abide...**U.S. vs. Moylin, 417 F 2d at 1002,1006.**

The jury must be correctly instructed by the referee (presiding judge) so that they may be correctly apprised of their power of which they may be ignorant. But they were not only **not** instructed in this nullification power, but they were **wrongly** instructed in direct contradiction to their power as defined by the Supreme Court.

It may have been better to have timely objected to this instruction, but manifest injustice may be assigned despite this lack, and this is grounds for reversal. **Rule 19 (c) U.R.C.P.**

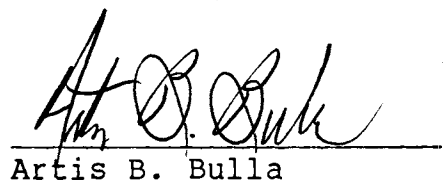
The argument of respondent using Lemmon v. Denver on p. 13 of brief is also specious since defendant has always agreed that "Determination of facts is left exclusively to the jury." What defendant takes issue with is jury power to nullify law is also within their perogative which was unlawfully limited by the presiding judge. "The corollary the court is the determinor of the applicable law" is not upheld by the citations used by the respondent, the citations merely limit the power of the court, not the power of the jury: "The court shall not comment on the evidence..." (d) Rule 19 of U.R.C.P.

CONCLUSION

Fifth Amendent applys regardless of whether interrogation is custodial or non-custodial. Prosecution has failed to address this issue, but has preferred to couch their argument in Miranda warnings, which are irrelevant, since defendant asserted his right without such prompts, which invocation was ignored by the policeman. Procedural error was then made regarding jury instruction, and though defendant did not have the wit to object at the time, manifest injustice was assigned to the court. In addition, stock instruction was inappropriate because of insufficiency of witnesses for prosecution to establish any fact, of which the jury was to be the **sole** judge. Where rights are concerned argumenst being tautological, citing to the record is

not always necessary, in making legal arguments.

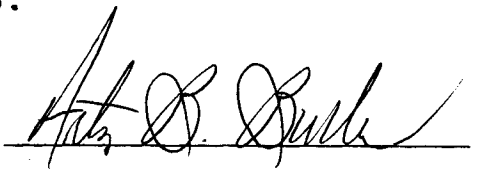
Respectfully submitted this 26th day of January, 1989.



Artis B. Bulla
In Person

I, Artis B. Bulla, appellant, certify that on this date, August 29, 1988, this brief was served to the following respondent: Don George, SLC Attorney.

Dated this ~~29~~ 26th day of ~~August~~ Jan., 1988.



Artis B. Bulla, Appellant